

Date of Hearing: March 31, 2009

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT AND THE ECONOMY  
V. Manuel Perez, Chair  
AB 31 (Price) – As Introduced: December 1, 2008

SUBJECT: Small Business and Procurement Act

SUMMARY: Makes several key changes to state procurement procedures for the purpose of increasing small business, including microbusiness, and disabled veteran-owned business enterprise (DVBE) participation rates. More specifically, the bill:

- 1) Increases the maximum contract threshold amount for awards to a small business and DVBE, under a specific streamlined procurement process, from \$100,000 to \$250,000.
- 2) Requires contractors that made contract commitments to include small business or DVBE participation to report at the conclusion of the contract on the actual percent of the contract amount that was paid to those entities.
- 3) Increases the minimum threshold for projects covered under the State Contract Act from \$100,000 with a base year of 1993 to \$250,000 with a base year of 2010. This effectively increases the value of contracts not covered by the advertising, bidding, and protest provisions under the State Contract Act.

EXISTING LAW:

- 1) Designates the Department of General Services (DGS) to administer the state Small Business Procurement and Contract Act (Small Business Act), including a streamlined procurement process which is exempt from advertising, bidding, and protest provisions in the State Contract Act for the acquisition of goods, services, or information technology.
- 2) Defines a small business as independently owned, not dominant in its field of operation, domiciled in California, employing 100 or fewer employees, and earning \$10 million or less in average annual gross revenues for the three previous years.
- 3) Defines a microenterprise as a small business that has average annual gross receipts of \$250,000 or less during the previous three years or is a manufacturer with 25 or fewer employees.
- 4) Defines a DVBE as a business entity that is at least 51% owned or controlled by one or more disabled veterans, as specified.
- 5) Establishes the State Contract Act for the purpose of governing contract practices between state agencies and private contractors, covering, among other items, contracts for projects with a value of over \$100,000, adjusted biennially for changes in the California Construction Index, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Purpose of the bill: According to the author, AB 31 makes a number of changes in state procurement practices to improve the ability of the state to increase small business and DVBE participation rates. This bill is sponsored by DGS.

In 2006, California voters approved over \$40 billion in general obligation infrastructure development bonds. The funding provided by the bonds will be spent on improvements to roads, highways, public transit, flood control, schools, and affordable housing. Project funding is expected to occur over the next 10 years, although the Governor and Legislature have placed a priority on expediting project delivery.

In 2009, the federal government enacted a \$787 billion economic stimulus package that included over \$3 billion in funding for infrastructure. These massive public works endeavors provide an opportunity for the state to use these moneys to strengthen the core of California's economy by expanding business opportunities for small contractors and DVBEs.

- 1) The Small Business Act: The Small Business Act, administered through DGS, was implemented more than 30 years ago to establish a small business preference within the state's procurement process that would increase the number of contracts between the state and small businesses. In 1989, a disabled veteran owned business enterprise (DVBE) component was added to state procurement practices.

Since 2001, there have been four Executive Orders (EOs) specifying a 25% goal for small business and a 3% DVBE participation in state procurement contracts, including EO D-37-01 (2001), EO S-02-06 (2006), EO D-43-01(2001), and EO S-11-06 (2006). Statutory advancements were also made to strengthen the Small Business Act including SB 115 (Florez), Chapter 451, Statutes of 2005, which required DGS to establish a DVBE incentive program for state contracts; and AB 761 (Coto), Chapter 611, Statutes of 2007, which specifically codified the 25% small business target for contracts related to revenues expended from the 2006 infrastructure bonds.

Notwithstanding the longstanding existence of the Act, statutory up grades, and EOs, the state's success in obtaining small business and DVBE participation goals in state procurement contracts has been inconsistent.

For only the second time since the small business participation target was established in 2001, DGS has reported that in 2006-07 the state achieved its small business target by awarding 28.31%, or \$2.65 billion, of the value of all contracts to small businesses. This represents a \$1.3 billion increase in contracts from 2005-06. The state did not achieve its 3% DVBE participation goal, however, as only 2.8% of contract dollars, \$186 million, was awarded in contracts including DVBE participation.

- 2) Streamlined procurement process: In order to assist agencies in reaching state participation goals, contracting entities are authorized to use a streamlined procurement method. This method allows the process for awarding contracts to bypass the advertising, bidding, and protest provisions in the State Contract Act. Under the provisions of the Act, a contract may be made directly with a certified small business or DVBE at a contract price established by checking the proposed rate with two other small businesses or DVBEs.

Contracts offered under the streamlined procurement process are currently limited to contracts between \$5,000 and \$100,000. AB 31 would increase this amount to \$250,000 for contracts for goods, services, and information technology. In 2006-07, 9,685 contracts were initiated using this streamlined procurement process, which accounts for \$211 million (7.43%) of the total DVBE and small business contracts. The California State University System reported using this process for 1,620 contracts totaling \$37 million in contracts.

3) Related legislation: Below is a list of related legislation:

- a) AB 761 (Coto): This bill required each state agency awarding contracts that are financed with proceeds from the infrastructure bonds approved by voters in November 2006 to establish a 25% small business participation goal for state infrastructure construction contracts and to provide specified assistance to small businesses bidding on state infrastructure bond-related contracts. Status: Signed by the Governor, Chapter 611, Statutes of 2007.
- b) AB 2773 (Price): This bill increased the maximum contract threshold amount for awards to small business, including microbusiness and DVBEs under the streamlined procurement process, from \$100,000 to \$250,000, as specified. Further, the bill required contractors that made contract commitments to include small business or DVBE participation to report those final percent of the contract actually paid to these entities. Status: Held under submission in Senate Appropriations Committee.
- c) SB 115 (Florez): This bill made various changes to the DVBE Program, including requiring DGS to establish a state agency-wide mandatory DVBE participation incentive. This bill also requires the DGS Small Business Advocate to provide specified services to small businesses and certified DVBEs. Additionally, this bill requires DGS to adopt a streamlined reporting procedure for state agencies to use in reporting their DVBE participation to the Department of Veterans Affairs. Status: Signed by the Governor - Chapter 451, Statutes of 2005.
- d) SB 642 (Denham): This bill increases the maximum contract threshold amount for awards to small business, including microbusiness and DVBEs under the streamlined procurement process, from \$100,000 to \$250,000, as specified. Further, the bill required contractors that made contract commitments to include small business or DVBE participation to report those final percent of the contract actually paid to these entities. Status: Set for hearing in Senate Governmental Organization Committee on April 28, 2009.

REGISTERED SUPPORT / OPPOSITION:

Support

Department of General Services (sponsor)  
National Federation of Independent Businesses

Opposition

None received